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Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE 324th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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Second periodic report of Guatemala

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GE.98-16042 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Guatemala (CAT/C/29/Add.3)

1. At the invitation of the Chairman, Mr. Padilla Menéndez, Mr. Alonso, Ms. Rodríguez de Fankhauser and Ms. Villacorta (Guatemala) took places at the Committee table.

2. The CHAIRMAN welcomed the Guatemalan delegation and invited it to present its country's report.

3. Mr. PADILLA MENÉNDEZ (Guatemala), briefly reviewing the overall human rights situation in his country, emphasized the Government's political will to pursue its efforts, efforts that would be made within the context of the ongoing peace process and the implementation of several agreements negotiated since 1986 which had led to the signing of the Agreement on a Firm and Lasting Peace on 29 December 1996. The United Nations Human Rights Verification Mission in Guatemala (MINUGUA), established in 1994, had been present in the country since that time and continued to monitor the implementation of the agreements. The process had moved ahead well enough for the United Nations Commission on Human Rights to decide by consensus, in April 1998, to end its consideration of the human rights situation in Guatemala. Obviously, that did not mean that the problems no longer existed or that there was no more abuse of authority. After 30 years of armed conflict, Guatemala needed to restructure the police force and punish those who had violated human rights, even though one of the peace agreements had provided for amnesty and national reconciliation. The Commission responsible for shedding light on human rights violations committed over the past 30 years, similar to the truth commissions set up in such countries as Chile and South Africa, was chaired by a German expert, Mr. Tomuschat, and consisted of eminent Guatemalan lawyers. It had been obliged to have its mandate extended by six months because it had not finished its work. Owing to the policy of national reconciliation, the Commission's work would not lead to court proceedings. The situation had not yet returned to normal, as evidenced by the tragic murder of Monsignor Gerardi, coordinator of a Catholic Church project with aims similar to the Commission's. The recent murder seemed to be tied in with those activities and the Government was committed to finding the guilty, bringing them to justice and punishing them in accordance with the law. To that end, it had set up a top-level commission.

4. In view of the time that had elapsed since the signing of the peace agreements, the fact that former guerrilla leaders had returned to the country to lead a normal life, and that the former Guatemalan National Revolutionary United Front (URNG) had become an opposition political party that would be participating in the June 1998 municipal elections, it could be said that the human rights situation had improved remarkably in Guatemala, in spite of the tragic event he had mentioned, one which, it was hoped, would not unleash a new wave of violence.

5. Mr. ALONSO (Executive Director of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, Guatemala) spoke of Guatemala's efforts and problems in implementing the Convention, to which the President and the Guatemalan people were particularly attached, after experiencing 36 years of internal armed conflict. Guatemala had come to a turning point in its history and the Government stood ready to consolidate the progress achieved, especially in regard to human rights.

6. At its fifty-fourth session, in April 1998, the United Nations Commission on Human Rights had decided to end its consideration of the human rights situation in Guatemala, something the Government had taken as recognition of its efforts and a mark of solidarity on the part of the international community. Furthermore, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had taken a similar decision at its forty-ninth session, in August 1997. Those two decisions were encouraging for Guatemala, which had embarked on political, economic and social development and multicultural and multilingual progress.

7. However, Guatemala was aware that it was still being closely watched by human rights treaty monitoring bodies as well as by MINUGUA, and reaffirmed its will to redouble its efforts to ensure that its human rights practices measured up to international standards. As to the Convention against Torture, the presentation of periodic reports to the Committee afforded an opportunity to take note of the progress achieved. An unnumbered supplement to the periodic report (CAT/C/29/Add.3) would be circulated to the members of the Committee. It contained important information on the period from 1 January 1997 to 31 March 1998, further to the observations made by the Committee in its conclusions and recommendations on Guatemala's initial report. The paper highlighted the progress made in the peace process. The agreements on social development had been translated into a national plan of action for which the Government would provide all its infrastructure and human resources. The implementation timetable set out in the peace agreements had been divided into three phases, extending from January 1997 to the year 2000, and laid down guidelines for fulfilling the 179 commitments made under the agreements. The United Nations Secretary-General had also prepared a report in February 1998 on the implementation of the peace agreements in Guatemala. During the first phase a number of bodies had been created: the Commission on Electoral Reform, the Joint Commission on Educational Reform, the Commission on the Strengthening of the Justice System, the Joint Commission on Indigenous Languages, and so on. On 3 May 1997, the former URNG combatants had been demobilized under the auspices of the United Nations. To date, all of the bodies set up under the peace agreements had functioned satisfactorily, and all 18 commissions had met on 23 April 1998 to assess the progress achieved and to prepare the report now being made available to the Committee.

8. The second part of the additional report concerned the situation regarding the armed forces. In accordance with the peace agreements and especially the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, a plan for institutional restructuring had been put into operation in 1997. As MINUGUA had been able to verify, the Ministry of Defence had managed to cut military personnel by 37.35 per cent, i.e. more than the 33 per cent set in the agreement. During the President's term of office which had begun in January 1996,

between 250 and 300 changes had been made in the higher ranks of the armed forces throughout the country; 80 per cent of the senior officer posts had been reassigned, three generals had been retired and seven placed on the reserve list. The aim of the changes had been to adapt the armed forces to their new role in a context of peace, reconciliation and democracy. In June 1997, a draft reform of the Constitution had been submitted to Congress. The reform, which would assign the Guatemalan army the exclusive role of defending the State's sovereignty and the country's territorial integrity, was still being examined by the legislative bodies.

9. The Voluntary Civil Defence Committees and the "military commissioners" had been done away with and the demobilization of some 200,000 volunteers, started in June 1996, and completed in December 1997, i.e. ahead of the agreed date, was a step taken in keeping with the recommendations of the United Nations Commission on Human Rights and the commitments made by the Government within the framework of the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society. Congress had begun to examine a bill on weapons and munitions presented by the Ministry of the Interior, incorporating the recommendations of the Follow-up Commission on Compliance with the Peace Agreements. The Ministry had also begun preparations to transfer the Weapons and Munitions Department, which come under the Army, to the Ministry of the Interior. Experts in various fields, including doctors, lawyers and psychologists, would prepare compulsory theoretical and practical examinations and psychological tests for persons who wanted to own a firearm. Congress had amended the Weapons and Ammunition Bill so as to prohibit the bearing of arms by persons under 25 years of age.

10. Both the Ministry of the Interior and the Ministry of Defence were concerned in the measures to fight against impunity. The Ministry of the Interior had undertaken an assessment of its own departments and had started to purge the security forces. As a result, in 1997 alone 168 police officers, mostly from the middle ranks, had been dismissed for committing illegal acts. In April 1998, the Police Commissioner had taken eight police officers to court for drinking alcohol while on duty. The National Police Academy had now become highly selective in recruitment. Officers who had been readmitted into the police force were being closely investigated to determine whether they had participated in illegal activities and if they were fit to perform their duties. All applicants for jobs in the National Police had to have a clean record and training at the Police Academy, where courses included training in human rights and, in particular, United Nations rules in that area. Since 1996, the Ministry of Defence, under a presidential order, had been purging the top levels of the defence hierarchy and some persons had been brought before the courts.

11. The security forces were now required to show moderation in the use of force, especially when evicting illegal land occupants. The National Police had been ordered to act within the strict confines of the law, and those operations and other measures requiring police intervention would take place in the presence of MINUGUA observers and representatives of the Offices of the Procurator for Human Rights and of the Public Prosecutor.

12. As to the strengthening of national bodies for the promotion and protection and human rights, in 1998 the budget for the Office of the

Procurator for Human Rights had been increased by 10 per cent over the 1997 budget and the allocations for the judiciary had also risen significantly. On 5 December 1997, the law establishing the Public Criminal Defence Service had been enacted. Since October 1997, a jurist, formerly the deputy human rights procurator, had been head of the Judicial Training School, and everything was being done to improve the level and training of judges, magistrates and public defenders. The Office of the Procurator for Children and Young People had been restructured in conformity with the Code on Children and Young People, which would enter into effect on 27 September 1998. A laboratory for testing drugs and psychotropic substances had been opened and there were more and more centres offering assistance to addicts.

13. As to a more professional corps of law enforcement officials, Congress, in Decree No. 11-97, had set up the National Civil Police to replace the traditional National Police. In August 1997, the Commission on the Strengthening of the Justice System had submitted to Congress and the Peace Secretariat its proposals for constitutional reform of the justice system as well as its opinion on the law concerning the Public Criminal Defence Office and changes to the Code of Criminal Procedure. Furthermore, the Guatemalan authorities were determined to improve coordination between the various actors within the justice system, in accordance with MINUGUA's recommendations in its second report. The President of the Supreme Court, the Procurator-General of the Nation and the Minister of the Interior had, in September 1997, signed a letter of intent concerning coordinated reform and modernization of the institutions they headed and, for that purpose, had set up a coordinating body. With the aid of the European Union, a computer network would be installed and would link up three bodies dealing with children: the Office of the Human Rights Procurator, the Public Prosecutor's Office and the Juvenile Court.

14. As far as the protection of witnesses, judges and prosecutors was concerned, the Service for the Protection of Witnesses and Persons Involved in the Administration of Justice had been set up in March 1996. Two years later, the Public Prosecutor's Office had asked to be allocated funds of its own so as to function effectively. Only a week ago, the authorities had revealed that six judges who had received threats were now being protected by the Public Prosecutor's Office and the National Police. In accordance with the peace agreements, the Military Code and the military courts were being reformed.

15. Furthermore, the Guatemalan authorities had started a war on poverty based on three strategies: emergency programmes for certain target groups, financed by social funds; institutional and structural reform; and a shift in policy in sectors directly linked to the fight against poverty, with better use of public funds. In 1997, social funds had helped to get specific important activities off the ground. For example, the Guatemalan Fund for Indigenous Development (FODIGUA) had carried out 134 social projects at a cost of about US$ 3 million, benefiting 40,379 persons. The National Fund for Peace (FONAPAZ) had helped populations living in the poorest and most remote areas of the country. In collaboration with other bodies, it had established a centre for the administration of justice in Santa María Nejab, in the department of El Quiché, where the population was predominantly indigenous. As the centre had been well received, it was planned to set up five more,

because they were an excellent way of giving the population in remote areas access to the justice system, thereby facilitating the settlement of disputes. The Fund had made it possible to build reception centres for the demobilized members of the Guatemalan National Revolutionary United Front and to set up a special programme of assistance to communities of displaced persons. The Guatemalan Housing Fund (FOGUAVI) had financed the building of housing and the Social Investment Fund (FIS) had introduced 1,976 projects to assist the needy. On 4 June 1997, the Presidential Department for Legal Assistance and the Settlement of Land Disputes (CONTIERRA) had been created with the prime objective of facilitating mediation in land ownership disputes.

16. The entry into force of Decree No. 58-95, making torture an offence, was an important factor in the campaign against torture. In its sixth report, MINUGUA had noted the considerable drop in the number of admissible complaints and verified cases of torture, pointing out that it had marked an improvement in the right to integrity and security of person. In its subsequent report, covering the first half of 1997, MINUGUA said it had received nine complaints of torture, only two of which had been declared admissible and only one had been verified. The members of the Committee had at their disposal the annex to the report of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, which showed the figures given in the MINUGUA reports on cases of torture and other cruel, inhuman or degrading treatment. The Guatemalan delegation stood ready to answer any request for additional information from the members of the Committee.

17. Mr. GONZALEZ POBLETE (Country Rapporteur) thanked the Guatemalan delegation for its detailed introduction, all the more useful as 20 months had elapsed between the written report and the oral presentation to the Committee. Guatemala had acceded to the Convention against Torture in 1990 but had not made the declarations provided for under articles 21 and 22. Guatemala was also party to the Inter-American Convention to Prevent and Punish Torture. The situation in Guatemala should be considered in the light of the long armed conflict the country had experienced and the efforts the authorities were making to build a democratic State in cooperation with the international community. In that respect, the MINUGUA reports and those of the Special Rapporteur of the Commission on Human Rights had been very instructive.

18. The Guatemalan Government itself recognized that there was still a lot left to do. Paragraph 14 of the report frankly stated that, as far as citizens' security was concerned, the initiatives taken previously had been insufficient and citizens did not have any confidence in the bodies entrusted with guaranteeing their safety. Even when the initial report had been considered, the Committee had noted that the action of the democratic civilian Government had been hindered by a deeply entrenched military and police culture. The judicial system was still suffering from quantitative and qualitative inadequacies and the Guatemalan Government was clearly aware of the serious consequences. With reference to the administration of justice, paragraph 16 of the report said it was clear that there was an urgent need for improvement. Paragraphs 44 to 51 mentioned a large number of initiatives to train prosecutors, judges and police officers and paragraphs 52 to 58 showed the means and material resources available to procurators, judges and the national police to secure greater respect for the law. Undoubtedly, some progress had been made, but as MINUGUA had pointed out in its seventh report,

the judicial system still did not make for proper administration of justice and respect for human rights. Impunity was still one of the main problems. The training programmes for judges and courses to recruit new judges were therefore particularly welcome. The report on the evolution of the situation of human rights in Guatemala in the light of the implementation of the peace agreements (E/CN.4/1998/93), prepared in early 1998 by the members of the Secretary-General's mission to Guatemala, gave a good idea of the true situation and of the Government's endeavours.

19. With specific reference to the rights protected under the Convention, the State party said in its report (para. 25) that the figures revealed a decline in the number of reports of torture in the strictest sense, but during the period in question complaints of cruel, inhuman or degrading treatment committed by agents of the State had still been received. It would be useful to have details about such cruel, inhuman or degrading treatment and about the kind of follow-up to the complaints of torture. In the cases reported, had the Public Prosecutor's Office initiated proceedings against the torturers and had they been punished by the courts? Paragraph 26 went on to say that MINUGUA, in its fifth report to the Secretary-General, stated that only four complaints were received in the period in question, only two violations had been verified and neither had been substantiated. In MINUGUA's sixth report, covering the second half of 1996, it was stated that three complaints of torture had been received, 13 violations had been verified and two violations had been substantiated. However, although the incidence of torture had improved between MINUGUA's fourth and sixth reports, the seventh report seemed to indicate some regression. It would be interesting to see whether that would be confirmed in MINUGUA's next report.

20. Close attention should be paid to the way in which acts were characterized. Paragraph 25 of the Government's report mentioned cruel, inhuman or degrading treatment as having been committed chiefly by agents of the State. MINUGUA's reports, in the section "Right to integrity and security of person", included five types of violation: torture; cruel, inhuman or degrading treatment; ill-treatment; excessive use of force; and other threats. Two of those violations - ill-treatment and excessive use of force - seemed to fall under article 16 of the Convention. For the other types of violation of the Convention, the figures given in the fourth, fifth and sixth MINUGUA reports, for 1995 and 1996 respectively, were 20 and 12 for cruel, inhuman or degrading treatment, 59 and 59 for ill-treatment and 14 and 113 for the excessive use of force, i.e. a total of 93 violations in 1995 and 184 in 1996. Those figures went to explain paragraph 170 of MINUGUA's fifth report, mentioned in paragraph 30 of the country report. As recognized in the same paragraph, the problem was the result of the State's weakness. The State should, in keeping with its commitment, fully guarantee protection of the population and bring to justice State agents responsible for those offences.

21. In its 1997 report, Amnesty International had cited three cases of torture in 1996 and, according to Human Rights Watch, there had been no case of torture in 1997. However, both organizations had reported cases which revealed the precarious human rights situation in Guatemala: increased criminal violence, continued impunity, frequent cases of intimidation, including death threats against judges, prosecutors, witnesses, journalists,

relatives of victims and human rights defenders, continued abductions and extrajudicial executions, activities by so-called self-defence groups, and killings of street children by the security forces.

22. The fate of the street children illustrated only too well the systematic violation of human rights in Guatemala. Human Rights Watch and the Casa Alianza association had condemned the treatment suffered by those children, who, depending on the sources, numbered from 1,500 to 5,000, the majority of them living in the capital. Between 1990 and 1995, 14 of them were said to have been murdered or to have succumbed to acts of torture and 45 had been victims of torture which had not resulted in death. Over the years 1996-1997, 14 had been killed and 8 others had survived acts of torture. While it was not possible to impute these crimes to public officials owing to the fact that the perpetrators had never been identified, the State could be criticized for not undertaking an impartial inquiry into those cases. According to the Human Rights Watch report, the Public Prosecutor's Office had justified its lack of response by passing the blame onto the families. That situation called for clarification. However, in late 1996 and early 1997, three heavy sentences had been handed down against child murderers and, in one case, against their accomplices as well.

23. Within that rather sombre context, a number of important decisions and encouraging developments pointed to a real political will to respect and ensure respect for human rights. Thus, the disbanding of the "military commissioners" represented a strengthening of civilian authority. The Voluntary Civil Defence Committees had begun to be dissolved but, as pointed out by MINUGUA in its sixth report, it was disturbing that some members of those Committees were still in possession of their weapons, which could mean that they were involved in criminal activities and were members of illegal armed groups.

24. The changes in the Code of Criminal Procedure sought to improve the administration of justice. However, while the prohibition on alternative penalties in certain circumstances reflected a commendable will to punish severely certain offences, the possibility of violation of the principles of presumption of innocence and of the exceptional nature of pre-trial detention was disturbing. Furthermore, the very high number of detainees awaiting trial, accounting for 75 per cent of the prison population, could rise even further. It was gratifying to see that the jurisdiction of the military courts was confined to military offences, in which connection he would like to know what the effects were of transferring 400 ordinary law cases against armed forces personnel from the military courts to the ordinary courts.

25. In the context of the purge of the National Police and the Financial Police, he asked which "authorities" the police officers suspected of corruption had been handed over to and, generally, what the outcome had been. During the consideration of Guatemala's initial report, the Committee had been sorry to find that the right to bear arms was written into the Constitution. The adoption of Decree No. 63-96 which banned the bearing of arms by persons under 25 years of age except for active members of the armed and civil security forces was therefore welcome. However, in view of the high number

of illegal weapons in the possession of individuals (estimates ranged from 250,000 and 550,000 weapons), which could lead to a resurgence in violence, it would be useful to evaluate the real effects of the ban on carrying weapons.

26. Paragraph 59 of the report spoke of the formation of a special police brigade to provide witnesses, judges and prosecutors with a measure of protection from threats or intimidation, as well as the establishment under Decree No. 70-96 of the Service for the Protection of Persons involved in Proceedings connected with the Administration of Justice. It was an important initiative and it would be useful to learn in detail about its activities and impact. Other positive initiatives included the law on the National Police and the opening of the Police Academy, which should make for a more professional police corps. The disbanding of the mobile military police had been completed in December 1997 and, to complete the process of restructuring the security forces into one single non-military nationwide police, the only thing still to be done was to dissolve the Financial Police. He wondered when that in fact would be done.

27. In its consideration of the initial report, the Committee had recommended strengthening the activities of the Office of the Procurator for Human Rights. The 10 per cent increase in the Office's budget for 1998 was a welcome move, but only 20 per cent of the entire budget was for actual operations. The remainder was allocated for the payroll.

28. It was regrettable that, despite the recommendation made during the consideration of the initial report, the State party had still not made the declaration under article 22 of the Convention against Torture and he wondered what the Government's intentions were in that regard. Lastly, he noted that Guatemala was gradually catching up on the schedule for the submission of reports and he urged it to keep to the schedule as far as possible, for the situation was changing very rapidly in Guatemala.

29. Mr. SORENSEN (Alternate Country Rapporteur) said he, too, thanked the Guatemalan delegation for its oral presentation. It was a pity that the report did not reflect the present situation, as it had been prepared over a year ago, and it did not refer to the Convention article by article.

30. It seemed impossible for article 2 of the Convention to be implemented in view of the provisions of article 201.A of the Penal Code. Explanations in that regard would be welcome. Article 201.A defined torture as an act performed on the orders of a superior. The Committee would like to know whether it was enough not to obey an order for the person concerned not to be considered a torturer. Furthermore, under Guatemalan law, torture could take place only in the context of a kidnapping. Would that mean that acts of torture performed in police stations and in military barracks were not subject to the law? He wanted clarifications because all those exceptions could have contributed to the recent fall in the number of cases of torture.

31. As to the situation in prisons, what was the exact number of prisoners in the country, what was the prison capacity, was there a problem of overcrowding - often synonymous with ill-treatment - and what was the proportion between the number of prisoners sentenced and those awaiting trial? Available information indicated that 75 per cent of detainees were in

pre-trial detention, which could lead to a profound loss of confidence in the judicial system, if that was not already the case. All the necessary measures should therefore be taken to speed up judicial procedures. Personally, he was convinced that a higher number of prison sentences would never solve the problem of a high crime rate. Efforts had indeed been made in regard to the training of judges, but the Committee would like additional information on specific measures to guarantee their independence and impartiality. Further information on the training of prison and health personnel would also be appreciated.

32. With reference to article 11 of the Convention, was there a system for inspecting police stations and prisons and were the findings published in reports?

33. As to the implementation of article 14, Guatemala was duty bound to ensure that victims had the right to redress and to fair and adequate compensation, including the means for as full rehabilitation as possible. That obligation was absolutely indispensable for a country like Guatemala, where repression had, over 36 years, taken hundreds of thousands of victims. The establishment of a stable democratic regime in the country would depend on the way in which the Government helped the victims to readjust to living in the society. What forms did the measures of redress offered by the Government take, had impunity been sufficiently studied and how was the rehabilitation of victims ensured? He suggested that the Guatemalan authorities could make a contribution, if only a token one, to the United Nations Voluntary Fund for Victims of Torture, and pointed out that the General Assembly had, in resolution 52/149, designated 26 June as United Nations International Day in Support of Victims of Torture.

34. Mr. MAVROMMATIS said he acknowledged Guatemala's evident political will to improve the human rights situation. The authorities were undoubtedly on the right track even though progress seemed somewhat slow. Priority should be placed on developing a human rights culture and making every citizen aware of his rights and obligations. Regrettably, Guatemala's report was confined to generalities and therefore did not provide Committee members with the requisite information for fruitful dialogue. He drew the delegation's attention to the existence of training courses on reporting, organized by the United Nations Centre for Human Rights.

35. Since the judiciary constituted the pillar of human rights protection, he asked how the independence, immunity and irremovability of judges were guaranteed.

36. As to the definition of torture, why had the Guatemalan Parliament not used the definition contained in article 1 of the Convention instead of improvising an incomplete definition? Generally speaking, he was not in favour of amnesties. However, where they did exist, they must be accompanied by an independent inquiry into the causes of the acts pardoned and must never eliminate the right of appeal.

37. Mr. CAMARA said he, too, appreciated the obvious desire of the Guatemalan authorities to institute the rule of law. He would like further clarification regarding paragraph 31 of the report, which stated that the

Penal Code had been amended to define extrajudicial executions, enforced disappearances and torture as offences. In French at least, "offences" (délits) and "crimes" (crimes) were not synonymous terms, and the acts in question should definitely be regarded as crimes.

38. As to the disbanding and the demobilization of 24,400 "military commissioners" (paragraph 32 of the report), he asked whether all the necessary measures had been taken to make sure that the former military commissioners - perpetrators of human rights violations - could no longer do any harm.

39. The CHAIRMAN thanked the delegation for its attention and invited it to answer the Committee's questions at the next meeting.

40. The Guatemalan delegation withdrew.

The meeting rose at 12.35 p.m.

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Second periodic report of Guatemala (continued)

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GE.98-16032 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Guatemala (continued) (CAT/C/29/Add.3; HRI/CORE/1/Add.47)

1. At the invitation of the Chairman, Mr. Padilla Menéndez and Mr. Alonso (Guatemala) resumed their places at the Committee table.

2. Mr. PADILLA MENÉNDEZ (Guatemala) stressed the importance of continued cooperation with the Committee and other human rights bodies, particularly in view of the assistance they had already provided in the process of peacemaking and peace-building. Guatemala was still trying to decide which of the tasks before it, including how to deal with the problem of impunity, should take priority.

3. Turning to the points raised by the Committee, he said that the National Reconciliation Act made it clear that persons responsible for human rights violations would not be granted political amnesty and could and would be brought to trial. He could not refute the allegations in the press and elsewhere that the so-called "death squads" were still operating. It was up to the investigating bodies to determine whether they were true or not. It was a fact that persons who had committed outrages in the past had enjoyed impunity.

4. The term "delito" referred to all kinds of offence from minor infractions to serious crime. For that reason, the Government had seen fit to specify during its reform of the Penal Code, the punishment attached to various kinds of crime, for example enforced disappearances, and what constituted criminal behaviour. Thus, for instance, the rational and proportional use of force to quell a riot or disturbance was not a crime and could not be construed as such, since what was and was not admissible behaviour for the police was clearly defined in Guatemala's legislation. For the Committee, that might seem like mere semantics, but if it had any problem with that interpretation it should include its comments in its recommendations, on the basis of which the competent authorities could look again at the question and any other issues the Committee might wish to raise, including that of whether Guatemala would consider making the declaration under articles 21 and 22 of the Convention.

5. Mr. ALONSO (Guatemala) said that the United Nations Verification Mission in Guatemala (MINUGUA) would comment on cases referred to by the Country Rapporteur, Mr. González Poblete, including the "Mincho case" in due course.

6. With regard to lynchings, he agreed with MINUGUA's conclusion in its report (A/52/330) that not enough was being done by the competent authorities to investigate the crimes.

7. Progress was being made in coordinating action on the problem of street children, particularly through the Standing Committee for Children, and details would be provided to the Committee.

8. The disarmament and disbandment of the Voluntary Civil Defence Committees was being monitored and verified by MINUGUA. Of the approximately 200,000 persons who had been members of the Committees, only about 15,000 were still armed.

9. The trial of persons accused of taking part in a massacre in October 1995, involving a military patrol, had been transferred to a civil court which, it was hoped, would deliver its verdict in the near future.

10. The National Civilian Police were monitored by an internal body, the Office of Civil Responsibility. Cases of human rights violations were transferred to the Public Prosecutor's Office.

11. There were no figures by which to assess whether amendments to the Weapons and Munitions Act had led to an increase in offences, although it was clear that the number of weapons confiscated since the amendments had gone into force had risen considerably as compared with previous years.

12. The Unit to protect persons on trial and persons involved in the administration of criminal justice was not functioning as well as it might, for lack of resources and funds.

13. With regard to the new National Civilian Police and other analogous security bodies, he confirmed that the former military National Police had been abolished and its 2,000 members demobilized. All National Civilian Police officers must graduate from the National Civilian Police Academy either, in the case of former military police officers, on completion of a retraining course or, in the case of new recruits, on completion of initial training. There would therefore continue to be a shortage of police officers until the training and retraining process had been completed. In the meantime, the Guatemalan armed forces were collaborating in policing activities, an arrangement that had not been criticized by any domestic or international human rights monitoring body. The operations in question were always coordinated by an authority representing the National Civilian Police and they would cease as soon as the full complement of trained police officers had taken up their duties.

14. The Government was aware that the resources available to the Human Rights Procurator were inadequate despite the 10 per cent increase in the 1998 budget appropriation.

15. Following the assumption of office by a civilian Government in 1985 after years of military dictatorship, Guatemala had ratified the main United Nations human rights instruments and renewed its presence in international human rights forums. Nine years had passed, however, before the authorities had submitted their first report in fulfilment of the obligations incurred under those instruments. Owing to their total lack of experience and the difficulty of obtaining the requisite data, its drafters had relied heavily on advisory support from the United Nations Centre for Human Rights. However, the Government was henceforth committed to the submission of all reports in good time and in strict compliance with its obligations. In 1996 a special forum within the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) had been assigned

responsibility for gathering material for the preparation of reports. The forum met each month with representatives of competent public-sector bodies, who reported on progress and difficulties. There were also plans to involve representatives of civil society and of non-governmental organizations (NGOs) in the drafting process.

16. He assured Mr. Sørensen that he would provide him with a copy of the final report of the high-level commission established to monitor the inquiry into the Bishop Gerardi case. The initial allegation that public opinion had been manipulated in connection with the case had been refuted since it had emerged on closer scrutiny that the President, when announcing the establishment of the Commission, had clearly indicated that it was merely monitoring an investigation to be conducted by the National Civilian Police under the supervision of the Public Prosecutor's Office.

17. With reference to Mr. Sørensen's interpretation of the wording of article 201 (bis) of the Penal Code regarding the crime of torture, it should not be taken to imply that the author of an act of torture could evade punishment by stating that he was acting on orders from a higher authority. Such a defence was not recognized either by the Convention or by the Constitution of Guatemala. Nobody who had carried out manifestly illegal orders could plead innocence. The presumed author of the offence would, of course, be required to specify in such cases who had issued the order so that he could also be brought to justice. Mr. Sørensen's point would in any case be considered very carefully and any suggestions made by the Committee would be taken into account.

18. The delegation had no figures for the number of persons currently held in places of detention but the relevant statistics would be transmitted to the Committee at a later date. The Inter-American Commission on Human Rights had recently requested the Government to take protective measures on behalf of a group of some 10 persons in Sololá Departmental Prison who had alleged inhuman treatment due to overcrowding and unhygienic conditions. The Minister of the Interior had immediately sought temporary new premises for the detainees and released resources for the construction of a prison in which conditions would be in keeping with Guatemala's human rights commitments. Unfortunately, overcrowding was still a widespread problem in detention centres. The food situation was improving. Corrupt practices in the purchase and preparation of foodstuffs in certain prisons had been remedied by the Ministry of the Interior through the conclusion of new contracts with caterers in the private sector in February 1998.

19. With regard to the alternatives to custodial measures, it was certainly not the intention of Guatemalan legislators to fill up detention centres by ruling out alternative measures. The object of the amendment to the Code of Criminal Procedure referred to by a member of the Committee had been to prevent persons accused of serious crimes from abusing certain remedies available under Guatemalan law. In the case of pre-trial detention, the Code of Criminal Procedure had recently been amended so as to reduce the duration of preparatory proceedings from six to three months and, in exceptional cases, to one month.

20. The delegation was unable to provide the information requested on the training of prison staff, the contents of curricula and the question of in-service training. However, COPREDEH organized training courses and lectures on human rights for National Civilian Police officers, prison guards, army officers and other security personnel.

21. The Supreme Court of Justice was elected by the Congress of the Republic from a list of 26 candidates proposed by a Nominations Committee composed of university vice-chancellors, the deans of the law faculties of each university, representatives elected by the General Assembly of the College of Lawyers and Notaries, and representatives elected by the judges of the Appeals Court. The 13 Supreme Court judges were elected by a two-thirds majority of the Nominations Committee. They then elected a President for a one-year term. The Appeals Court judges were also elected by the Congress of the Republic from a list compiled by a Nominations Committee composed of deans of law faculties and a representative of the College of Lawyers and Notaries. Judges of first instance and justices of the peace were elected through an internal Supreme Court procedure. A new Attorney-General had recently been elected and would take office on 18 May 1998. The election procedure was similar to that for Supreme Court and Appeals Court judges. The Nominations Committee submitted a list of six candidates to the President of the Republic who took the final decision. The procedure was different for the Government Procurator, who was a public official appointed by the President of the Republic.

22. Reports to human rights treaty bodies had not hitherto been made public but the recommendations of the Committee against Torture following its consideration of Guatemala's initial report had been publicized. A press conference had been held and copies distributed to the media. In future all documents intended for human rights treaty bodies would be circulated widely.

23. Activities in the areas of rehabilitation and compensation were mainly linked to the sequelae of the internal armed conflict, and in that regard the National Reconciliation Act provided for the establishment of a commission to determine compensation to victims, under the Ministry of Peace. COPREDEH had initially proposed a nationwide survey to determine the number of whereabouts of the victims, particularly in Verapaz, which was the area most affected by the conflict. The Government hoped to make a start on compensating the victims in conformity with the National Reconciliation Act.

24. There were also some cases which had been referred to the Inter-American Commission on Human Rights and in which Guatemala had agreed to amicable settlements. One case, regarding the death of a Civilian Patrol member in Colotenango had already been resolved, and an amicable settlement was pending, in another case, relating to an eviction from a plantation in Quetzaltenango department. There were other cases as well in which the Government had expressed its interest in reaching an amicable solution, without prejudice to the continuance of proceedings still pending against the perpetrators of human rights offences. Sentence had already been passed in the Colotenango case against several former members of the Civilian Patrol for their deplorable acts during the armed conflict.

25. The National Reconciliation Act was not applicable to any case involving violations of human rights or in connection with the internal armed conflict. To date, it had been applied to only three cases, at the request of former members of the Guatemalan National Revolutionary Unit Movement (URNG). There was a well-known case of several soldiers who had been tried for causing the death of the anthropologist Myrna Mack Chang, and who had repeatedly been denied the benefits of the Act, but as far as the Government knew, it had never been applied abusively.

26. The delegation would convey to the authorities the Committee's wishes regarding the International Day in Support of Victims of Torture and Guatemala's contribution to the United Nations Voluntary Fund for Victims of Torture.

27. In reply to the concerns expressed by Mr. Mavrommatis, human rights culture in Guatemala was still in its infancy, but the Government was sure it was on the right path to building and broadening respect for human rights among all Guatemalans.

28. COPREDEH had been created in 1991 and begun functioning in 1992. It was chaired by Dr. Christian Tomuschat, who had been an independent expert of the Commission on Human Rights on the situation of human rights in Guatemala and was General Coordinator of the Commission to Clarify Past Human Rights Violations. He had conceived of COPREDEH as a coordinating body which would provide a unified response by the entire governmental system to its international commitments in the field of human rights, as, despite the fact that Guatemala had ratified many international human rights instruments, the only previous governmental response to those commitments had been a small unit of two persons within the Ministry of Foreign Affairs to deal with human rights matters. The Commission had been created thereafter with an Executive Board comprising the Minister of National Defence, the Minister of the Interior, the Minister for Foreign Affairs, and the Attorney-General of the Republic, and a personal representative of the President, Ms. Marta Altolaguirre, as coordinator. That was how the Commission had functioned originally. Later, the Organic Law of COPREDEH had been amended, expanding the Commission to include the Coordinator of the Government Peace Commission, who was in charge of negotiating the peace process. Later still, the Procurator-General of the Republic had been added to its members. With the Agreement signed on 29 December 1996, the Peace Commission had automatically been abolished, and therefore its representative no longer served on the Commission. The Agreement had also created the Ministry for Peace, but it had not yet been given a seat on the Commission as its functions were not deemed to have any relation to the Commission's purpose.

29. The main function of the Commission was to monitor the observance of human rights among the units of the Executive concerned. It had no powers to investigate or to receive complaints. It tried to strengthen the powers of the Procurator for Human Rights, whose functions were quite different. The Government thought of the Procurator as an external auditor of the work done by the Executive in the field of human rights and of the Commission as an internal auditor. The Commission's activities would, it was hoped, leave the Procurator with less work to do on violations. The Commission's functions and composition might soon be redefined, but the project was still in draft form.

30. The Financial Police, which was due to be abolished, was responsible for investigating all offences or crimes that might damage the economic interests of the State, including smuggling, drug trafficking and illegal cropping; the new National Civilian Police would have the task of dissolving it. The premises of the former Mobile Military Police had been taken over for the National Civilian Police school, and the Government hoped to do the same with the premises of the former Financial Police.

31. A question had been asked about the "military commissioners" and their "demobilization", which he put in quotes because many of them were said to remain armed. It was true that many of them had kept their weapons, firstly because they were their own property and secondly because they had been authorized to do so in consideration of their status. The weapons situation was currently changing, however: it had been made illegal to bear arms without a permit from the Department of Weapons and Munitions Control. There were several cases of former Commissioners who had been remanded in custody or indicted for committing offences on that count. The Government deliberately did not speak of the former Civilian Patrols or military commissioners because they had ceased to belong to the armed forces and were civilians who must comply with the law or face prosecution.

32. The delegation of Guatemala withdrew.

The public part of the meeting was suspended at 4.30 p.m. and resumed at 5.45 p.m.

Conclusions and recommendations of the Committee

33. At the invitation of the Chairman, Mr. Padilla Menéndez and Mr. Alonso (Guatemala) resumed their seats at the Committee table.

34. The CHAIRMAN invited the Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the second periodic report of Guatemala.

35. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the following text:

"The Committee considered the second periodic report of Guatemala (CAT/C/29/Add.3) at its 324th and 325th meetings, on 7 May 1998 (CAT/C/SR.324 and 325) and adopted the following conclusions and recommendations:

A. Introduction

1. Guatemala acceded to the Convention on 5 January 1990. It has not submitted the declarations provided for under articles 21 and 22 of the Convention.

2. Guatemala is also a State party to the Inter-American Convention to Prevent and Punish Torture.

3. The report was submitted on 17 February 1997 and covers the period between 31 July 1995, when the first report was submitted, and 30 August 1996. During the Committee's consideration of the report, the Guatemalan delegation gave updated information in its oral presentation and submitted an addendum containing information covering the the period between 1 January 1997 and 31 March 1998.

4. The Committee's work was complicated by the fact that the report does not adhere to the general guidelines adopted by the Committee on the form and content of periodic reports, which stipulated that reports should follow the order of the articles of the Convention (arts. 1 to 16).

B. Positive aspects

1. The Agreement on a Firm and Lasting Peace, signed on 29 December 1996, which ended the prolonged armed conflict.

2. The elimination of all State-promoted policies that violate human rights.

3. The proclaimed wish of the State authorities to promote a thorough reform of the administration of justice and of public security, with a view to rectifying the shortcomings of the Judiciary, the Public Prosecutor's Office and the National Police.

4. The demobilization of the Voluntary Civil Defence Committees, whose members were reported in the past to have committed the most serious violations of human rights.

5. The restriction of military jurisdiction to essentially military crimes and misdemeanours and consequent transfer to ordinary courts of all proceedings against members of the armed forces for ordinary crimes and similar acts.

6. The demilitarization of the police forces and the start made on restructuring them into a single National Civil Police with the disbandment of the Mobile Military Police and the professionalization of the police function through the establishment of the Police Academy where anybody wishing to join the force, obtain promotion or specialize must undergo training. The Committee noted with satisfaction that the training of members of the police will henceforth include, as a priority subject, the study of human rights and the analysis of the principal international instruments in this sphere, in accordance with the provisions of article 10 of the Convention.

7. The implementation of intensive training programmes in substantive criminal law for serving judges and the strengthening of the College of Legal Studies to ensure that posts are filled by the best-qualified judges, through a selection process based on objective technical criteria.

8. The process of purging the National Police and the Financial Police through the dismissal of members suspected of involvement in human rights violations.

9. The raising of the minimum age for bearing firearms to 25 years.

10. The numerical reduction in the strength of the armed forces.

C. Factors and difficulties impeding the application of the provisions of the Convention

1. Continued grave qualitative and quantitative weaknesses in the Judiciary, the Public Prosecutor's Office and the Police, which are the State institutions responsible for ensuring the safety of persons and laying the foundations for the functioning of a State which will respect and guarantee human rights.

2. The repeated instances of intimidation of judges, prosecutors, witnesses, victims and their relations, human rights activists and journalists, which largely accounts for the absence of decisive action by the bodies that should investigate and try crimes and for the continuance of impunity. Article 13 of the Convention makes States responsible for the protection of victims and witnesses.

3. The delay in putting into operation the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice.

4. The inadequacy of the funds allocated by the State to the Human Rights Procurator, which limits his activities in the investigation of alleged human rights violations by State agents, and in the promotion of a culture of tolerance and respect for these rights, at a time in the country's history when particular importance should be attached to those functions.

5. The spread in Guatemalan society of a deep-rooted culture of violence, which it has not proved possible to reverse.

D. Subjects of concern

1. The persistence of impunity for crimes, particularly grave human rights violations.

2. Although the number of reports of torture has declined there are still problems due to incompetence in the Public Prosecutor's Office, the Judiciary and the Police, which are the State bodies responsible for investigating such reports, identifying and arresting the perpetrators and bringing them to trial.

3. The increase in the number of reports of cruel, inhuman or degrading treatment by State agents.

4. The proliferation of unlawful possession of weapons by private individuals, which is largely responsible for the high levels of criminal violence that seriously jeopardize the safety of citizens and undermine confidence in the institutions of the rule of law.

5. The faulty definition of the crime of torture in article 201-A of the Penal Code, which is not consistent with article 1 of the Convention.

E. Recommendations

1. Intensification of efforts to elucidate past grave violations and to ensure that such situations do not recur. Articles 11 and 12 of the Convention require that the State should proceed ex officio to a prompt and impartial investigation of any report of torture.

2. Completion of the process of setting up a single National Civil Police, with the disbandment or demobilization of the Financial Police.

3. Continuance of the process of reducing the number of permits to carry firearms to the strictly essential minimum.

4. The putting into operation as soon as possible of the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice.

5. The allocation to the Human Rights Procurator of the necessary funds for effectively carrying out, throughout the national territory, the functions and duties assigned to and enjoined upon him under the Constitution and the law.

6. Harmonization of article 201-A of the Penal Code with the definition of torture contained in article 1 of the Convention.

7. The Committee reminds the State authorities that their representatives informed it, during its consideration of the Initial Report, that the process of preparing the declaration referred to in article 22 of the Convention had been initiated and that in their view no obstacles existed to completing the process.

8. The prompt submission, if possible during the coming year, of the Third Report, the form and content of which should comply with the previously-mentioned guidelines on the presentation of reports."

36. The CHAIRMAN thanked the delegation of Guatemala for the abundance and clarity of the information it had laid before the Committee, reflecting the depth of the changes that were being made in that country, and for the spirit in which that information had been submitted.

37. Mr. PADILLA MENÉNDEZ (Guatemala) thanked the Committee and the Country Rapporteur for the opportunity to report on the situation in Guatemala, and for their acknowledgement of the progress that had been achieved. The conclusions and recommendations would be transmitted to the Government for

implementation as the prevailing circumstances allowed, with priority for the timely submission of the third periodic report and the recommendations pertaining to articles 1-16 of the Convention.

38. Mr. ALONSO (Guatemala) undertook to keep the Committee informed of progress in implementing its recommendations. Guatemala would persevere in its efforts to eliminate not only torture but also other cruel, inhuman or degrading treatment or punishment, both nationally and throughout the region.

39. The delegation of Guatemala withdrew.

The meeting rose at 6 p.m.

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of New Zealand (CAT/C/29/Add.4, CAT/C/12/Add.2)

1. At the invitation of the Chairman, Mr. Farrell, Ms. Holmes and Ms. Geels (New Zealand) took places at the Committee table.

2. The CHAIRMAN welcomed the New Zealand delegation and, recalling the Committee's custom that any member who was a national of a State whose report was under consideration should refrain from participating in the debate, said that he would not participate in the dialogue between the Committee and the representatives of New Zealand.

3. Mr. Camara took the Chair.

4. Mr. FARRELL (New Zealand) said that the submission of New Zealand's second periodic report was of particular significance because it was taking place in the fiftieth anniversary year of the Universal Declaration of Human Rights. The report, like the initial report, stated that no one had been convicted of or charged with committing an act of torture. New Zealand was the only country which, before ratifying the Convention, had passed legislation to implement the obligations it was about to undertake ("Act to make better provision for the punishment of crimes of torture and to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"). The second periodic report, which covered the period from January 1991 to January 1995, highlighted a number of legislative and regulatory measures which had been adopted since 1991, including the adoption of the Mutual Assistance in Criminal Matters Act 1992, the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Accident Rehabilitation and Compensation Insurance Act 1992 and the Health and Disability Commissioner Act 1994, the revision of training procedures for prison officers relating to the prohibition against torture, the development of standards for community-based residential services with the objective of safeguarding children in care, the decision of the Court of Appeal in the Simpson v. Attorney-General case, which recognized the ability of individuals to seek compensation directly from the State for any breach of the individual's rights under the New Zealand Bill of Rights Act 1990, and the inquiry into complaints by prisoners at Mangaroa prison alleging assault by prison officers.

5. He also wished to inform the Committee about a number of developments which had occurred since the preparation of the report, particularly the changes to the justice sector of the New Zealand Government in 1995. The functions of the former Department of Justice had been divided between the Ministry of Justice (responsible for criminal law), the Department for Courts (responsible for the day-to-day running of the courts) and the Department of Corrections (which enforced the sentences imposed by the courts).

6. A number of other developments had taken place since the preparation of the report, which improved New Zealand's implementation of various articles of the Convention. In relation to article 2 of the Convention, new regulations

governing penal institutions which were due to enter into force on 1 July 1998 would bring about a major modernization of the management regime of penal institutions and the care of inmates. Detention conditions would be improved from a practical, medical, spiritual and cultural point of view and inmates would have access to inspectors and Ombudsmen and would have recourse to a complaints procedure. Following amendments to the Penal Institutions Act which had entered into force in 1995, inmates might not be placed under mechanical restraint except in the case of absolute necessity and a written order signed by a visiting justice was required if the inmate was to be kept under mechanical restraint for more than 24 hours.

7. In respect of article 3, he said that the Office of the United Nations High Commissioner for Refugees had appointed a permanent representative in New Zealand, who was authorized to attend any appeal against decisions on refugee status and advise various government departments on issues of general policy relating to refugees.

8. With regard to article 8, he said that the need to review New Zealand's extradition legislation in order to simplify extradition procedures between New Zealand and countries outside the British Commonwealth was described in the report (paragraph 8) and a draft law on extradition would soon be submitted to Parliament with the aim of rationalizing and simplifying the three existing regimes relating to extradition. Parliament had just adopted an amendment to the Mutual Assistance in Criminal Matters Act, which allowed New Zealand to provide special assistance to States parties to the Convention even if there were no formal cooperation arrangements (article 9 of the Convention).

9. In respect of article 10 and following the recommendations of the ministerial inquiry into incidents at Mangaroa prison (paragraphs 16-22 of the report), the training given to prison officers was to be improved. Thirty-nine competency standards for prison staff had already been drawn up by the project team responsible for training.

10. The Ministry of Health had closely monitored the implementation of the Mental Health (Compulsory Assessment and Treatment) Act since its entry into force in 1992. In June 1997, guidelines had been published to facilitate its interpretation (article 11 of the Convention).

11. In respect of the implementation of article 12 of the Convention, the Code of Health and Disability Services Consumers' Rights, mentioned in paragraph 24 of the report, had entered into force on 1 July 1996. Procedures to ensure the prompt and impartial investigation of allegations made by persons detained in public penal institutions had been substantially amended, following the above-mentioned restructuring of the justice sector and the ministerial inquiry into the incidents at Mangaroa prison. The report of the inquiry, known as the Logan report, had been published and some of its recommendations had already been implemented, including the establishment of an internal complaints procedure in each prison, the establishment of a unit within the Office of the Ombudsman to deal with inmates' complaints, more information for inmates about their rights, a review of recruitment procedures for prison officers and training for those responsible for recruiting prison officers to ensure that the candidates selected had the necessary skills.

12. As to article 13 of the Convention, he said that new regulations adopted in 1996 ensured that care institutions for children and young people had a complaints procedure to which all residents had easy and free access. Complaints had to be dealt with promptly. The procedure did not replace the requirement that any serious allegation against a staff member of the institution must be reported to the police. The interests of the child were paramount in all cases.

13. The Committee's questions about the situation of refugees in New Zealand who were survivors of torture had been answered in paragraphs 38 to 40 of the report. Since the preparation of the report, two centres had been set up to help with the psychosocial rehabilitation of the refugees and increase community awareness of issues related to resettlement.

14. All the legislative and practical improvements he had mentioned formed part of the continuous assessment and review process which was essential for the effective implementation of the Convention and were consistent with the New Zealand Government's desire to protect all citizens against the risk of torture and ensure that any allegations of torture were fully investigated in accordance with the Convention. The New Zealand delegation was at the Committee's disposal to answer any questions which members might wish to ask about the second periodic report.

15. Mr. YAKOVLEV (Country Rapporteur) said that he welcomed the submission of the second periodic report, which referred to the Convention article by article, and the information it contained. The delegation's oral introduction had also been most interesting. The only point that required clarification was whether the police inquiry into incidents at Mangaroa prison had been completed for the purpose of gathering sufficient evidence to recommend to the Solicitor-General that one or more officials should be investigated under the 1989 law on crimes of torture. If so, the Committee would like to know what conclusions had been reached and whether the persons responsible had been punished.

16. Mr. ŽUPANČIČ (Country Rapporteur) said he was pleased to note that New Zealand did not have any of the problems on which the Committee's questions normally focused. He would therefore concentrate on the mental health sector and psychiatric establishments. With regard to the new Mental Health (Compulsory Assessment and Treatment) Act (1992), which was discussed in paragraph 13 of the report, he would welcome further information on the procedural guarantees protecting the mentally ill who were considered to be a danger to themselves and to others and who had been committed: who took the decision to commit them, in accordance with what criteria and on the basis of what information? Was that decision reviewed by a psychiatric authority outside the establishment in which the patient was accommodated and how often? Clearly, to be deprived of one's freedom in a psychiatric establishment was no less distressing than in a prison; consequently, the procedural guarantees applicable to criminal matters should also be applied, where necessary, in connection with psychiatric confinement, as was now the accepted practice in the United States, for example.

17. Paragraph 14 of the report stated that a child or young person could not be held in secure care for more than 72 hours. Was such detention comparable

to police custody and, if so, given that police custody was apparently limited to 24 or 48 hours, why was the time limit for secure detention for minors so much longer? Was electric shock treatment used in psychiatric hospitals in New Zealand, was such treatment subject to regulation and, if so, what was its nature? Electric shock treatment was banned in some countries; where it was not, it was not infrequently used for preventive purposes, to ensure docile behaviour on the part of patients.

18. He had been most favourably impressed by the fact that, contrary to usual practice, a private detective agency had been hired to conduct the inquiry into the incidents at Mangaroa prison. It would be interesting to receive information on the size of the prison population in New Zealand in 1997 and whether its racial composition was comparable to that of the population as a whole.

19. He requested further details on the Simpson v. Attorney-General case discussed in paragraph 28 of the report. He requested confirmation that the Court of Appeal's decision stated the right of the injured party to be compensated by the State when his rights had been breached by a public servant. Lastly, paragraph 38 of the report stated that New Zealand currently had between 16,000 and 20,000 refugees; where did they come from, to what extent had they been subjected to torture in other countries and had it been found that they suffered from post-traumatic stress?

20. Mr. SORENSEN, congratulating New Zealand on its report and its very clear introduction, said that he had only a few questions. The first related to article 10 of the Convention. The training given to prison staff in New Zealand was all the more commendable in that few countries provided training for such personnel. It would be very useful for the Committee to receive a copy of the 39 competency standards for prison staff that had been mentioned by the delegation in its statement.

21. Article 10 also dealt with the training of medical staff; it should be emphasized that such persons should receive training not only in the mental health field, as stated in the report, but also specifically regarding the prohibition of torture. That was particularly important for New Zealand, which received a large number of refugees, many of whom suffered the after-effects of torture; once those refugees had moved away to different parts of the country, they would be dealing with general practitioners, who should therefore know how to treat such patients. It should not be difficult to organize training of that kind in New Zealand, where new centres specializing in matters relating to torture had been opened. He asked whether the prohibition against torture featured in the curriculum for medical staff and, if not, he hoped that that gap would be filled in the near future.

22. New Zealand's implementation of article 14 of the Convention was entirely satisfactory. In that connection, the General Assembly of the United Nations had decided by consensus, on 12 December 1997, to proclaim 26 June 1998 the first United Nations International Day in Support of Victims of Torture. There were many ways in which New Zealand, which had done so much for those victims, could commemorate the day; for instance, it might announce that it would increase its contribution to the United Nations Voluntary Fund for Victims of Torture.

23. Mr. YU Mengjia said he was pleased to note that no case of torture had been reported in New Zealand during the period under consideration and that he had only two questions for the delegation. First, considerable attention was paid in the report to the placement of children in institutions; were such children particularly exposed to the risk of ill-treatment? Secondly, he would welcome further information on the Code of Health and Disability Services Consumers' Rights, mentioned in paragraph 24 of the report, and on its connection with the Committee's mandate.

24. Mr. EL MASRY said that he was also very satisfied with the report submitted and the oral introduction by the New Zealand delegation; the only point on which he would like clarification concerned extradition. It appeared that a person accused of torture could be extradited from New Zealand without the need for a treaty, and that was a very welcome procedural simplification. It was to be hoped that other countries would follow New Zealand's example, as torturers would then no longer feel safe anywhere. Did that measure relate only to torture or did it apply also to crimes against humanity or terrorism, for example?

25. The CHAIRMAN thanked the New Zealand delegation and invited it to continue the dialogue at the next meeting.

26. The New Zealand delegation withdrew.

The public part of the meeting rose at 11 a.m.